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Josef Fuerlinger - December 3, 2004
Examination by Mr. Cerski

16:06:33 1 maintain and grow its market?
16:06:41 2 MR. KELLY: Object to the form.
16:06:49 3 (Interpreter interprets)
16:07:02 4 THE WITNESS: To looking for new
16:07:05 5 business opportunities.
16:07:08 6 Q. (BY MR. CERSKI): I'm not looking for
16:07:10 7 specific substances. I'm just looking in general for
16:07:15 8 what Rotax -- what Rotax does to maintain or find new
16:07:19 9 business opportunities.
16:07:21 10 MR. KELLY: Are you asking about the
16:07:23 11 aircraft engine business or overall?
16:07:25 12 MR. CERSKI: Overall.
16:07:28 13 (Interpreter interprets)
16:07:34 14 THE WITNESS: We are looking for -
16:07:36 15 THE INTERPRETER: He said, "We are
16:07:36 16 looking for new business opportunities." This was
16:07:41 17 his reply.
16:07:42 18 Q. (BY MR. CERSKI): Oh, I'm sorry. So how do
16:07:43 19 you go about looking for those? That's what I'm
16:07:47 20 interested in.
16:07:49 21 MR. KELLY: In the relevant time
16:07:50 22 period, 198 to 2002.
16:08:09 23 THE WITNESS: Define maybe new point.
16:08:12 24 To find new potential offer, application of our
16:08:15 25 current engines.

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16:16: 08 :18 16: 08:25 16 : 0 8 :2 7 16: 0 8 16: 08 :18 16: 08:25 16 : 0 8 :2 7 16: 0 8: 16: 08 :18 16:
55 9 16 09: 2 5 16 09:25 9 16 09: 2 5 16 09:2 8 16 0 9: 4 0 16 09:4 2 16 09:4 3 16: 09:4 4 16: 09: 5 1 16:
1010 10 16: 10 13 16: 10: 17 16: 1010 10 16: 10 13 16: 10: 17 16: 10 : 19 16 : 10 :24 16: 10 :26 16 10 :
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11 12 13 14 15 16 17 18 19 20 21 22 23 24 25

Q. (BY MR. CERSKI): Okay. Do you advertise
Rotax engines?
A.
Q.

No.

Do you develop a concept of new engines and then seek manufacturers that may
need that engine? A. Q.

Yes.

And have you ever contacted manufacturers in the United States?

A. Q. A. Q. A. Q. A. Q-

In the relevant time frame? Uh-huh. We have been contacted by manufacturers. From the United States? Yeah. What manufacturers? Such as an aircraft manufacturer? Well, I would like all, I mean, if there's somebody outside of aircraft as well, but you could start with aircraft if you like. AQ.

Yes, I start with aircraft.

Okay. What are the manufacturers for aircraft that have contacted you?

A. There was a project about a new generation of aircraft engines where we had some contact from the manufacturer who are located in Florida.

Q. And what's that manufacturer?

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16:11:03 1 A. In respect of the confidentiality agreement
16:11:07 2 which has been signed, I cannot disclose their name.

16:11:22 3 Q. Let's do it this way. Have there been more
16:11:36 4 than one that has contacted you, aircraft
16:11:37 5 manufacturer?

16:11:41 6 A. Not that I'm aware.

16:11:52 7 Q. I'm going to refer you to Fuerlinger No. 9

16:11:55 8 and **Fuerlinger No. 10, which** are Bates stamped 2232

16:11:59 9 to 2245 for No. 9; and that is the March 20th, 2001

16:12:07 10 board minutes. And then No. 10 is 2246 to 2257, and

16:12:18 11 that is May 9th of 2001; and what I'm going to direct

16:12:41 12 your attention to is those areas they marked.

16:14:29 13 (Witness reads document)

16:14:33 14 Q. (BY MR. CERSKI): Okay. Is Piper Aircraft

16:14:36 15 Corporation one of the manufacturers that contacted

16:14:38 16 Rotax for the development of a V-6 engine?

16:14:50 17 A. Yes.

16:14:52 18 Q. And did Rotax enter into a contract with

16:14:56 19 Piper to produce this engine?

16:14:59 20 MR. KELLY: Before this goes any

16:15:01 21 further, I'll just put out a caution. I'm not going

16:15:07 22 to let him answer questions about this that are not
16:15:11 23 specifically related to jurisdiction in Pennsylvania.

16:15:14 24 If you want to ask him

16:15:16 25 jurisdiction-type questions rather than prying into a

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16:15:22 1 confidential arrangement that they had with a
 16:15:25 2 customer, I'll consider those questions, but if this
 16:15:26 3 becomes a fishing expedition about a Piper contract,

 16:15:32 4 I'm not going to allow it to go forward.

 16:15:34 5 MR. CERSKI: It's not a -
 16:15:34 6 MR. KELLY: So I'll just put that out
 16:15:3G 7 there now.
 16:15:37 8 MR. CERSKI: It's not a fishing

 16:15:39 9 expedition. I believe that Judge Shilling did not

 16:15:42 10 limit this to contacts within Pennsylvania law. And
 16:15:44 11 one of the reasons for jurisdictional purposes is if
 16:15:49 12 T would be transferred, it would be an argument to be
 16:15:52 13 made in the court that it could go to Florida.
 16:15:55 14 MR. KELLY: But if the questions are
 16:15:57 15 about contacts in Florida in some way rather than
 16:16:00 16 about details of the arrangements with Piper, that
 16:16:03 17 may be something to consider; but I don't know where
 16:16:06 18 this is going, but it's a jurisdictional --

 16:16:09 19 MR. CERSKI: I'm not going to get into
 16:16:09 20 the details of the contract with Piper; but if they

 16:16:12 21 have a contract with Piper for this engine, it is a
 16:16:16 22 contact for jurisdictional purposes.
 16:16:20 23 MR. KELLY: And has that been
 16:16:22 24 established already?
 16:16:24 25 MR. CERSKI: What, if they have a

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16:16:25 1 contract?
 16:16:26 2 MR. KELLY: Uh-huh.
 16:16:27 3 MR. CERSKI: No, that's my question.

 16:16:29 4 That's when you came in.
 16:16:35 5 MR. KELLY: Off the record.

 16:16:37 6 (Discussion off the record, and recess
 16:16:43 7 taken)
 16:31:21 8 MR. CERSKI: For the record, while we
 16:31:24 9 were off the record, I had conversations with
 16:31:28 10 counsel, and it appears that there is a third-party
 16:31:31 11 confidentiality agreement with regard to Piper and
 16:31:34 12 Rotax. In that light, I withdraw my question as to
 16:31:39 13 whether there is a contract between Piper and Rotax;
 16:31:43 14 however, I reserve my right to send interrogatories
 16:31:46 15 to Rotax concerning Piper and Rotax.
 16:31:52 16 MR. KELLY: And we reserve our rights
 16:31:54 17 to object whether on the basis -- well, on the basis
 16:31:58 18 of the confidentiality objection. Go ahead.
 16:32:05 19 Q_ (BY MR. CERSKI): Okay. Mr. Fuerlinger, you

16:32:07 20 did testify, however, that -- that you were contacted
 16:32:14 21 by a Florida manufacturer. That's correct, right?
 16:32:18 22 A. That's correct.
 16:32:18 23 Q_ And did you go to Florida to have business
 16:32:24 24 discussions with this manufacturer?
 16:32:38 25 A. Yes.

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Josef Fuerlinger - December 3, 20D4
 Examination by Mr. Cerski

16:32:38 1 Q- And how many times did you go to Florida?
 16:S2:41 2 A. Sir, I don't keep any records, but it's
 16:32:47 3 maybe a handful.
 16:32:50 4 Q. And did this Florida United States
 16:32:53 5 manufacturer come to Rotax to visit?
 16:32:55 6 A. Yes.
 16:32:58 7 MR. ~~KELLY~~let me just -- if I
 16:33:00 8 can ask one question.
 16:33:02 9 MR. CERSKI: Sure.
 16:33:03 10 MR. ~~KELLY~~Me handful I'm going
 16:33:04 11 to have him put prior to year end 2002, all after
 16:33:08 12 that.
 16:33:14 13 THE WITNESS: Most likely all because
 16:33:16 14 the relationship has been -- we did not pursue that
 16:33:24 15 project at first.
 16:33:26 16 MR. KELLY: Okay. Okay.
 16:33:30 17 Q. (BY MR. CERSKI): Now I'm going to show
 16:33:33 18 you -
 16:33:49 19 THE INTERPRETER: 2S.
 16:33:50 20 MR. ~~KELLY~~you have much more?
 16:33:53 21 MR. ~~CERSKI~~whole lot more.
 16:33:55 22 I've been keeping an eye on it to try to get done
 16:33:59 23 sooner than later. Let me show you Fuerlingcr 25.
 16:34:03 24 This is an article about a -- what T think was
 16:34:07 25 originally a Rotax V-6 engine.

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16:34:11 1 Is that the same engine that's
 16:34:12 2 referred to in Fuerlinger 21 and 20 -- or 21 and -
 16:34:18 3 MR. KELLY: If you need better light,
 16:34:20 4 just have -- you can go over there.
 16:34:30 5 (Discussion off the record)
 16:34:59 6 THE WITNESS: Well, I see the article
 16:35:00 7 the first time.
 16:35:01 8 Q. (BY MR. CERSKI): You've seen the article -
 16:35:04 9 you almost have it at the end.
 16:35:06 10 What is the engine that that article's
 16:35:10 11 referring to?
 16:35:10 12 A. Well, it's a V-6 engine from Rotax, what
 16:35:20 13 it's saying here.
 16:35:21 14 Q. Is that the same engine that's referenced
 16:35:24 15 in board minutes Fuerlinger's 21 and 10?

16:35:37 16 A. Yes.
 16:35:37 17 Q. Now, when you said that the project with
 16:35:41 18 the- Florida manufacturer was dead, is there another
 16:35:48 19 United States manufacturcr who's pursuing this
 16:35:50 20 engine?
 16:35:51 21 MR. KELLY: Within the relevant time
 16:35:55 22 period?
 16:35:56 23 MR. CERSKI: Yes.
 16:36:06 24 THE WITNESS: I'm aware.
 16:36:30 25 Q- (BY MR. CERSKI) This article referenced
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16:36:35 1 that although the engine was built, there were
 16:j6:39 2 American components in it as well. Do you know which
 16:36:45 3 American components are in this engine? They give an
 16:36:55 4 example of a 270-amp alternator starter and turbo
 16:37:00 5 charger.
 16:37:10 6 (Mr. Cerski hands document to witness)
 16:37:19 7 THE WITNESS: To the fact that this
 16:37:21 8 engine is not yet in serial production, we don't know
 16:37:25 9 when it goes to be in production last. I don't know
 16:37:28 10 if this is the case, and I am not the auditor of this
 16:37:31 11 so I cannot comment.
 16:37:33 12 Q. (BY MR. CERSKI): Well, in the development
 16:37:34 13 stages, did you have contact with American
 16:37:36 14 manufacturers to develop a turbo charger for the
 16:37:39 15 engine?
 16:38:21 16 A. I don't recall.
 16:38:28 17 Q. As vice president of aircraft engines, did
 16:38:33 18 the development of this aircraft engine that's
 16:38:35 19 referred to in this article fall under your
 16:38:38 20 responsibilities in the company?
 16:38:43 21 A. For a certain period of time, yes. out of
 16:39:02 22 the relevant time from what we're talking.
 16:39:05 23 Q- And at a certain time point was this engine
 IG:39:10 24 put into a separate unit, business unit, segment?
 16:39:22 25 THE INTERPRETER: didn't c
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16:39:23 1 get the first part of the question.
 :16:39:24 2 MR. CERSKI: He said at a relevant
 16:39:27 3 time period, at a certain point, was it that -
 16:39:30 4 THE INTERPRETER: Out of the relevant
 16:39:32 5 time period was only a certain point?
 16:39:34 6 MR. CERSKI: A certain point.
 16:39:34 7 Q. (BY MR. CERSKI): So was there a point where
 16:39:36 8 this was taken out of the aircraft engine's division
 16:39:39 9 that you were the vice president of and put somewhere
 16:39:41 10 else?
 16:39:45 11 (Interpreter interprets)

16:40:01 12 THE WITNESS: Yes.
 16:40:01 13 Q. (BY MR. CERSKI): Okay. During the time
 16:40:03 14 period that you were responsible for this -
 16:40:06 15 development of this engine, were there discussions
 16:40:08 16 with American manufacturers to provide component
 16:40:10 17 parts?
 16:40:38 18 A. I do not want to exclude it, but I don't
 16:40:40 19 recall it.
 16:40:41 20 Q. Okay. Was this engine developed for any
 16:41:00 21 particular market?
 16:41:01 22 A. No.
 16:41:11 23 Q- Did Rotax conduct marketing with regard to
 26:41:23 24 this engine, advertising, announcements, inviting
 16:41:34 25 press corp to Rotax?

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16:41:48 1 A. In this given time frame?
 16:-41-50 2 Q. Yes.
 16:41:51 3 A. No. It was a highly confidential project.
 16:41:55 4 MR. CERSKI: And if you would allow me

 16:41:58 5 just this one question, and then I won't go past
 16:42:01 6 this.
 16:42:03 7 Q- (BY MR. CERSKI): This is actually a
 16:42:03 8 November 2004 article, and it refers to something
 16:42:12 9 like a flight test or demonstration in Florida. Is
 16:42:15 10 that something that Rotax put on in Florida?

 16:42:20 11 A. Sir, I'm -- I left the aircraft department
 16:42:24 12 in -
 16:42:26 13 It's outside of my time
 16:42:28 14 frame.
 16:42:29 15 -- outside of my time.

 16:42:31 16 MR. KELLY: His time and the
 16:42:34 17 jurisdiction.

 16:42:34 18 Q- (BY MR. CERSKI): Have any
 16:42:35 19 knowledge of that?
 16:42:36 20 A. No.
 16:42:38 21 MR. KELLY: No.
 16:42:40 22 Q. (BY MR. CERSKI): Have a
 16:42:44 23 marketing plan?

 16:42:50 24 A. What is your definition of a "marketing
 16:42:52 25 plan?"

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16:42:54 1 Q. A marketing plan, it's kind of like a
 16:43:00 2 strategic plan in that it identifies markets, it sets
 16:43:07 3 goes for Rotax to achieve, it articulates how the
 16:43:10 4 goals are going to be achieved to develop new
 16:43:24 5 business, keep its current business. That's my
 16:43:20 6 definition of a "marketing plan.,,

16:43:29 7 A. Well, we are first -- we would not call it
 16:43:31 8 as marketing plan. We have a strategic planning
 16:43:35 9 where we look into beyond the normal budget year what
 16:43:40 10 may kind of product we do, quantity, just to be able
 16:43:44 11 to plan it, the capacity of the Rotax.
 16:43:48 12 Q. Okay. And does that strategic plan discuss
 16:43:56 13 Rotax engines exposure to various markets or
 16:44:01 14 territories?
 16:44:02 15 A. No.
 16:44:04 16 Q. Does it identify how -- so does it set
 16:44:10 17 goals on what Rotax wants to achieve as to increasing
 16:44:14 18 its product?
 16:44:23 19 A. It gives basic how many units of an
 16:44:27 20 existing -- or products we may produce in the
 16:44:33 21 consequent year to allow the capacity planning.
 16:44:35 22 Q- Okay. So other than -
 16:44:45 23 MR. CERSKI: Could we go off the
 16:44:46 24 record for one minute.
 16:44:48 25 (Discussion off the record)

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16:46:14 1 Q- (BY MR. CERSKI) Can you show you
 16:46:15 2 what's marked as Fuerlinger 11 and it's board
 16:46:19 3 minutes from August 21st of 2001. And this may be
 16:46:24 4 just an example, I can't read it but maybe you
 16:46:28 5 can.
 16:46:28 6 Is this what you're referring to as
 16:46:30 7 "strategic plan?" It seems to list all of the
 16:46:41 8 products and -
 16:46:51 9 A. sir, they -- the figures does not
 16:46:57 10 be -- I can't hardly read it.
 16:47:00 11 Q. okay.
 16:47:00 12 A. Or mostly cannot.
 16:47:02 13 That's fine. I mean, if you can't make an
 16:47:08 14 identification, I don't want you to guess. Thank
 16:47:10 15 you. you analyze whether Rotax is meeting its
 16:47:46 16 production goals? Strike that.
 16:47:48 17 you analyze whether Rotax is
 16:47:51 18 meeting its sales goals?

16:47:55 19 A. We monitor the actual yearly budget.

16:48:18 20 Q- If there is a downturn in your sales, do
 16:48:20 21 you try to determine what market the downturn is a
 16:48:26 22 result of?
 16:48:44 23 A. To the fact that we make products for
 16:48:47 24 specific customers, sometimes we get the explanation
 16:49:03 25 could be bad weather, that's the market way,

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 Examination by Mr. Cerski

16:49:08 1 economical depression; that the projection did not
 16:49:12 2 come as we had it planned.
 16:49:14 3 Q- So have there been instances where a poor
 16:49:27 4 winter in the United States, meaning no snow,
 16:49:31 5 resulted in the downturn of engine sales as a result
 16:49:37 6 of the downturn in Ski-Doo sales? Has that been
 16:49:43 7 explained to Rotax?

16:49:53 8 A. Yes.
 04:05:18 9 (Discussion off the record)
 16:50:02 10 Q. (BY MR. CERSKI): Does Rotax provide its
 16:50:06 11 logo to BMW and Aprilia for use?
 16:50:25 12 A. I don't know.
 16:50:43 13 Q. Is the Rotax logo trademarked in the United
 16:50:46 14 States?
 16:51:05 15 A. I don't recall.
 16:51:06 16 Q. Does Rotax dedicate in its annual budget a
 16:51:10 17 certain amount of money to be expended on advertising
 16:51:14 18 or marketing?
 16:51:42 19 A. We may have a different definition of
 16:51:45 20 marketing and advertising. When we're looking for
 16:51:53 21 employees, we're making in the local areas
 16:51:58 22 announcements or look for it. That maybe goes under
 16:52:04 23 the advertising.
 16:52:04 24 Q. I mean with regard to the products.
 16:52:11 25 A. Not that I'm aware.

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16:52:17 1 Q. Have you ever been to the trade show named
 16:132:21 2 sun In Fun in Florida?
 16:52:25 3 A. Yes.
 16:52:25 4 Q. And were you there on behalf of Rotax?
 16:52:28 5 A. I was on a personal behalf there.
 16:52:41 6 Personal.
 16:52:41 7 Q. Personal behalf.
 16:52:46 8 At that trade show did -- was there a
 16:52:49 9 Kodiak stand?
 16:52:54 10 A. I was only a very few times there. I don't
 16:52:59 11 really recall.
 16:52:59 12 Q. Do you ever recall a red camper with Rotax
 16:53:04 13 on the front of it, being stamped on the front?
 16:53:15 14 (Interoreter interprets)
 1-6:53:19 15 THE WITNESS: A few times. If you call
 16:53:24 16 maybe help me or show me something, maybe I -
 16:53:29 17 Q. (BY MR. CERSKI): I don't have a picture.
 16:53:30 18 But like a canopy for a booth.
 16:53:34 19 MR. KELLY: Tent.
 16:53:34 20 MR. CERSKI: Tent.
 16:53:36 21 (Interpreter interprets)

IG:53:37 22 Q. (BY MR. CERSKI) and then
 16:53:39. 23 underneath would be a display of Rotax engines.
 IG:53:43 24 A. I may have seen one, but I don't know how
 16:53:49 25 it looked like.

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16:53:50 1 Q- Okay. Does Rotax advertise in the United

16:~3:58 2 States national publications?

16:54:00 3 A. No.

16:54:15 4 Q. Your distributors are permitted to

16:54:17 5 advertise within the United States; is that correct?

16:54:20 6 A. As is defined in the contract.

16:54:23 7 Q. Do you not restrict them in any way?

16:54:27 8 A. No.

16:54:33 9 Q. We talked about earlier how the contracts

16:54:43 10 refer to Rotax approving ads that the distributors

16:54:52 11 are going

ce. Do you remember that?

16:54:57 12 A~ Yes.

16:55:00 13 Q. Is there such an agreement with BMW and

1-6:55:04 14 Aprilia if they're going to use the Rotax name?

16:55:23 15 A. if they would use the Rotax name, I would

16:55:25 16 assume there would be an agreement in place.

16:55:43 17 Q. These are probably pretty quick ones.

16:55:47 18 Do you ever do direct marketing in the

16:55:50 19 United States?

16:55:50 20 A- No.

16:55:50 22 Q. Have you ever sent, either in a block or

16:55:54 22 individually, e-mails to end users in the United

16:55:57 23 States?

1,6:55:57 24 A. No.

16:55:58 25 Q- How about to the dealers in the United

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16:56:01 1 States?

16:56:02 2 A. None.

16:56:02 3 Q. Have you ever done telemarketing?

16:56:05 4 A. No.

16:56:09 5 Q. Other than that single visit from the

16:56:13 6 dealers in the United States, have you had any other

16:56:19 7 United States manufacturer or end user to your

16:56:24 8 factory here in Austria?

16:56:38 9 A. As I said, Rotax does not keep any records

16:56:41 10 of visits -- visitors. The only what I recall is the

16:56:51 11 one Florida manufacturer where the project was --

16:56:54 12 there was some visit at Potax.

16:56:58 13 Q. Okay. And the dealers themselves coming

16:57:01 14 over, the other one that we talked about?

16:57:05 15 A. And the dealers which have been invited by

16:57:10 16 our authorized distributors.

16:57:12 17 Q. Okay. And let me show you Puerlinger 11,

16:57:26 18 and this is the board minutes for August 21st, 2001.

16:57:48 19 Did you tell me earlier

16:57:46 20 Mr. Ploekinger, was he a general manager of Rotax?

16:57:52 21 A. Yes.

16:57:56 22 Q. And I want to point you to this area.

16:58:32 23 (witness reads document)

16:58:57 24 Q- (BY MR. CERSKI)- Okay. my question for you

16:58:59 25 is: Mr. Ploekinger states that they did an official

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16:59:04 1 press launch in June this year of 2001 here at Rotax
16:~9:07 2 to North American Press. Do you know what that's
16:59:12 3 referring to?
16:59:14 4 A. No.
16:59:14 5 Q. Is it typical for Rotax to bring over
16:59:18 6 American Press to do a "press launch?"
16:59:28 7 A. No.
16:59:30 8 Q- Do you know what an official press launch
16:59:34 9 is as it would be defined by Rotax?
16:59:38 10 A. As I said, I'm not -- we're not involved in
16:59:42 11 the marketing and -- can I have a second look here?
16:59-47 12 Q. Sure.
17:00:17 13 (Witness reads document)
.1-7:00:18 14
THE WITNESS: I can only perhaps guess
17:00:20 15 because I have not been participating in it. And
17:00:23 16 there was a new product foreseen. We may have been
17:00:26 17 asked by Bombardier, Inc., to host such an event in
17:00:32 18 Austria.
17:00:32 19 Q- (BY MR. CERSKI) Do you know where
17:00:36 20 Club Bombardier is?
17:00:37 21 A. I've never been to one.
17:00:38 22 Q- Do you know what it is?
17:00:40 23 A. I don't know.
17:00:45 24 Q- You don't know. Okay.
17:01:00 25 Have there been other events that

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17:01:09 1 you're aware of with American Press that -- well, I
17:01:09 2 will have there been other events that you
17:01:10 3 have been involved in with American Press coming to
17:01:19 4 Rotax?
17:01:20 5 A. No.
17:01:20 6 Q. Do you know what the Rotax Owners
17:01:22 7 Association is?
17:01:27 8 A. No.
17:01:28 9 Q. Is the Rotax Owners Association a part of
17:01:33 10 Rotax?
17:01:34 11 A. No.

. . 17:01 -34 12

Do you receive any correspondence from the

17:01:37 13 Rotax Owners Association?
17:01:39 14 A. No.
17:01:45 15 Q- They don't -- you've never -- have you
17:01:47 16 received any lists of members of the Rotax Homeowners
17:01:53 17 Association?

17:01:54 is A. No.
 17:01:56 19 Q- Let's go through some of these others
 17:01:59 20 qu i ck I y.
 17:01:59 21 Have you ever paid taxes in
 17:02:01 22 Pennsylvania?
 17:02:02 23 A. No.
 17:02:03 24 Q. Have you ever dealt with a manufacturer to
 17:02:08 25 purchase component parts located in Pennsylvania?

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17:02:22 1 A. I don't know.
 17:02:22 2 Q- Have you dealt with component part
 17:02:25 3 manufacturers in the United States?
 17:02:32 4 A- Might be the case.
 17:02:44 5 Q- Do you remember any of those component part
 17:02:47 6 manufacturers?

17:02:50 7 A. No.
 17:02:51 8 Q- Does Rotax own any land in Pennsylvania?
 17:02:55 9 A. No.
 17:02:57 10 Q. Licensed to do business in Pennsylvania?
 17:03:02 11 A. No.
 17:03:10 12 Q. Any bank accounts in Pennsylvania?
 17:03:11 13 A. No.
 17:03:24 14 Q. Any liens against a Pennsylvania resident?
 17:03:29 15 (Interpreter interprets)
 17:03:34 16 TAE WITNESS: No.
 17:03:40 17 Q. (BY MR. CERSKI): Has Bombardier ever sued

17:03:42 18 someone in Pennsylvania?
 17:03:44 19 A. I don't know.
 17:03:45 20 Q- Has Rotax ever sued someone in
 17:03:48 21 Pennsylvania?
 17:03:57 22 A. No.
 17:04:18 23 Q. Does Rotax own any stock in a Pennsylvania
 17:04:22 24 corporation?
 17:04:22 25 A. No.

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Josef Fuerlinger - December 3, 2004
 Examination by Mr. Cerski

17:04:23 1 Q. Does Rotax own any stock in any United
 17:04:26 2 States corporation?
 17:04:28 3 A. No.
 17:04:37 4 Q~ Does Rotax lease any property or facilities
 17:04:42 5 in Pennsylvania?
 17:04:43 6 A. No.
 17:04:50 7 Q- Has Rotax -- did Rotax attend this year's
 17:04:59 8 AOPA convention that was held in Pennsylvania?
 17:05:02 9 MR. KELLY: This year's?
 17:05:06 10 MR. CERSKI: Yeah. It was in
 17:05:08 11 Philadelphia.
 17:05:09 12 MR. KELLY: That's outside of the time
 17:05:11 13 frame you referenced. You just have to -
 17:05:12 14 MR. CERSKI: Sure.
 17:05:13 15 Q- (BY MR. CERSKI): Has Rotax ever sent
 17:05:15 16 representatives to trade shows that were held in
 17:05:17 17 Pennsylvania?

17:05:17 18 A. No.
 17:05:18 19 Q. Air shows in Pennsylvania?
 17:05:20 20 A. No.
 17:05:21 21 Q. Has Rotax ever conducted seminars in
 17:05:25 22 Pennsylvania?
 17:05:26 23 A. No.
 17:05:31 24 Q. Has Rotax sent a representative to
 17:05:37 25 Pennsylvania to conduct any type of business?

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Josef Fuerlinger - December 3, 2004
 Examination by Mr. Cerski

17:05:48 1 A. No.
 17:05:56 2 MR. CERSKI: Where's my -- here it is.
 17:06:04 3 (Discussion off the record)
 17:06:15 4 Q- (BY MR. CERSKI) user wants to
 17:06:17 5 have their engine overhauled, who would they go to?
 17:06:20 6 A. To someone who has the capability to do it.
 17:06:35 7 Q. Do the service centers have the capability
 17:06:38 8 to do it?
 17:06:39 9 A. I don't know.
 17:06:44 10 Q. Does Kodiak as a distributor?
 17:06:55 11 A. I can't answer this question.
 17:06:57 12 Q. Does Rotax overhaul engines?
 17:07:22 13 A. Yes.
 17:07:25 14 Q- And could someone from the United States
 17:07:26 15 request Rotax to overhaul an engine?
 17:07:29 16 A. No.
 17:07:50 17 Q. Does -- who does Rotax overhaul engines
 17:07:53 18 for?
 17:07:53 19 A. Rotax has a very small limited capacity of
 17:07:57 20 overhauling the engines, and we are not reflecting on
 17:08:02 21 this business.
 17:08:03 22 Q. You're not? I'm sorry.
 17:08:05 23 A. Not reflecting on this type of business.
 17:08:07 24 It's the duty of our authorized distributor to
 17:08:09 25 organize this.

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Josef Puerlinger - December 3, 2004
 Examination by Mr. Cerski

17:08:11 1 Okay. So it's Kodiak's duty to over -- not
 17:08:15 2 to overhaul but to organize overhaul availability?
 17:08:19 3 A. Correct.
 17:08:22 4 Q. Could Kodiak send an engine to Rotax for
 17:08:26 5 overhaul?
 17:08:26 6 A. They could.
 17:08:46 7 Q. And the engines that you do overhaul
 17:08:51 8 currently, are they primarily just from Austria, or
 17:08:56 9 where are we talking about where they're coming from?
 17:09:01 10 A. As I said, we more or less stopped the
 17:09:05 11 activities because all the authorized distributors
 17:09:09 1.2 have the capability to overhaul engines, and this

17:09:14 13 goes most likely only for certified engines.
 17:09:17 14 Q. Okay. And when did you -- so do you still
 17:09:21 15 conduct it for certified engines?
 17:09:23 16 A. Very limited numbers.
 17:09:24 17 Q. Okay. And when did you stop it for
 17:09:29 18 uncertified?

 17:09:30 19 A. We never did it for uncertified.
 17:09:32 20 Q. Okay. Has Kodiak sent to you engines for
 17:09:39 21 overhaul?
 17:09:57 22 A. I don't know.
 17:10:00 23 Q. How about Rotax?
 17:10:03 24 A. I don't know.
 17:10:04 25 MR. CERSKI: How about you give me

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Josef Fuerlinger - December 3, 2004

Examination by Mr. Cerski

17:10:06 1 maybe five minutes, and I'll just go through and
 17:10:09 2 we'll kind of wrap it up by 5:30.
 17:10:12 3 MR. KELLY: I think we're about there.

 17:10:18 4 MR. CERSKI: I think we took about an
 17:10:19 5 hour's breaks.

 17:10:21 6 MR. KELLY: I'm only going to 5:30,
 17:10:24 7 but I'll be happy to accept less than that

 17:10:27 8 MR. CERSKI: try.

 17:10:31 9 (Recess taken)
 17:15:56 10 Q. (BY MR. CERSKI): Does Rotax consider itself
 17:15:59 11 a leader in the production of ultralight engines?
 17:16:07 12 MR. KELLY: Object to the form.
 17:16:13 13 THE WITNESS: Rotax is one of the

 17:16:35 14 manufacturers of ultralight engines.

 17:16:40 15 Q- (BY MR. CERSKI): Who are your competitors?
 17:16:46 16 A. Just as -- such as Hirth, HKS, Jabiru.
 17:16:54 17 There's many. I don't know all the names.
 17:16:59 18 Q. Do you know where -- do you know what
 17:17:05 19 Rotax's market share is for the ultralight engine,

 17:17:10 20 aircraft engines, as it relates to its competitors?

 17:17:14 21 A. There is no significant -- there is no
 17:17:17 22 data (sic) available where we could use it.

 17:17:20 23 Q. Okay. When the term Bombardier

 17:17:37 24 Recreational Products Group is used, that includes
 17:17:41 25 Rotax; is that correct?

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Josef Fuerlinger - December 3, 2004

Examination by Mr. Cerski

17:17:48 1 A. Yes.
 17:19:47 2 Q- Do you consider the United States
 17:19:49 3 marketplace as key to Rotax's overall success?
 17:19:55 4 MR. KELLY: Object to the form.
 17:19:58 5 THE WITNESS: Can you repeat the
 17:20:04 6 question, please.
 17:20:04 7 Q. (BY MR. CERSKI): Sure. Do you consider the
 17:20:06 3 United States marketplace as key to Rotax's overall
 17:20:13 9 success?
 17:21:05 10 A. I have difficulties to really understand
 17:21:07 11 your questions and the intent of your questions.
 17:21:17 12 I'm -
 17:21:18 13 Q. Do you want me to try to rephrase it?
 17:21:23 14 A. Please.
 17:21:24 15 Q. Okay. When Rotax looks at all of its
 17:21:28 16 customers and they analyze how the sale of Rotax
 17:21:32 17 engines are going, do they look at the United States
 17:21:38 18 as a major consumer of the products that incorporate
 17:21:45 19 a Rotax engine into; therefore, Rotax's success is
 17:21:52 20 key -- is linked, I should say, to the United States?
 17:22:00 21 I don't know if that clarified it or
 17:22:02 22 not, but -
 17:22:03 23 MR. KELLY: Object to the form.
 17:22:07 24 THE WITNESS: Rotax does business, as
 17:22:10 25 previous mentioned, with a few customers, and we try

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Josef Fuerlinger - December 3, 2004
 Examination by Mr. Cerski

17:22:20 1 to meet the need of the cust -- customer's
 17:22:27 2 requirements, such as Aprilia, for extent, to name
 17:22:32 3 one of our customers.
 17:22:33 4 Q. (BY MR. CERSKI): And does Rotax -- does
 17:22:47 5 Rotax understand -- let me put it this way: Rotax
 17:23:05 6 has knowledge as to how many ATVs, personal water
 17:23:09 7 craft and snowmobiles are imported into the United
 17:23:13 8 States from Bombardier; is that correct?
 17:23:16 9 A. No.
 17:23:19 10 Q. It's not correct that Rotax does not have
 17:23:23 11 that knowledge?
 17:23:26 12 MR. KELLY: Well, let's not make it
 17:23:27 13 too compound here. I mean, is it correct that Rotax
 17:23:30 14 has the knowledge or correct that Rotax doesn't have
 17:23:33 15 the knowledge?
 17:23:35 16 Q. (BY MR. CERSKI): Do they have the knowledge
 17:23:36 17 or not have the knowledge?
 17:23:39 18 A. We do not sell the entire -- the entire
 17:23:49 19 complex product, whatever the engine goes into, so
 17:23:53 20 we -- we sell our product ex-works. That's what goes
 17:23:58 22 to our customers, and that's what we have the
 17:24:01 22 knowledge where they -- how much engine we sell to a
 17:24:04 23 customer.
 17:24:34 24 Q- Do you know the number one sale - country
 17:24:37 25 in sales for personal water craft that Bombardier

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Josef Fuerlinger - December 3, 2004
 Examination by Mr. Cerski

17:24:42 1 sells?
 17:24:45 2 A. I have a general, personal idea, North and
 17:25:16 3 South America.
 17:25:17 4 Q. And which company is that -- or which
 17:25:20 5 country?
 17:25:21 6 A. North **and South America.**
 17:25:23 7 MR. KELLY: North and South America.
 17:25:24 8 Q. (BY MR. CERSKI): Oh, North and South
 17:25:25 9 America. But you don't have an idea of which
 17:25:27 10 country?
 17:25:29 11 A. Personally not. I'm not involved in this
 17:25:34 12 business.
 1.7.-25:34 13 MR. KELLY: Chris, you can now tell
 17:25:36 14 Arthur that you took it to the limit.
 17:25:40 15 I'm down to CERSKI more
 17:25:42 16 minutes. I'm sorry.
 1.7:25:54 17 It's a new MR. KELLY.
 17:25:59 18 MR. CERSKI: It's a what?
 17:25:59 19 It's a new MR. KELLY.
 17:25:59 20 Wherein, the deposition was concluded at 5:30, you
 17:26:02 21 can say that.
 17:26:05 22 MR. CERSKI: Thank you,
 17:26:07 23 Mr. Fuerlinger. I have no more questions.
 17:26:09 24 (Proceedings concluded at 5:26 p.m.)
 1.7:26:09 25
 379295.1

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Oral Deposition - Josef Fuerlinger
 December 3, 2004

17:26:09 1
 2
 3
 4
 5 I declare under penalty of perjury that the
 6 foregoing is true and correct.
 7
 8
 9 JOSEF FUERLINGER
 10
 11
 12 SUBSCRIBED AND SWORN TO BEFORE ME, the
 13 undersigned authority, by the witness, JOSEF
 14 FUERLINGER, on this the ___ day of
 15

16

17

is

19

NOTARY PUBLIC IN AND FOR
THE STATE OF

20

21 My Commission Expires:

22

23

24

25

379295.1

Oral Deposition - Josef Fuerlinger
December 3, 2004

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THERESA MARIE SIMEONE,
Personal Representative
of the Estate of Albert
Francis Simeone, Jr.,
Deceased, and THERESA
MARIE SIMEONE, In Her Own
Right, and MARY ANN
LENGYEL, Personal
Representative of the
Estate of George Lengyel,
Deceased, and MARY ANN
LENGYEL, In Her Own Right

CIVIL ACTION NO. 02CV4852

Plaintiffs,

vs.

JURY TRIAL DEMANDED

BOMBARDIER-ROTAX GmbH, et al.

Defendants.

REPORTER'S CERTIFICATE
ORAL DEPOSITION OF JOSEF FUERLINGER
December 3, 2004

I, the undersigned Certified Shorthand Reporter and Registered
Professional Reporter, certify that the facts stated in the foregoing
pages are true and correct.

I further certify that I am neither attorney or counsel for,
related to, nor employed by any parties to the action in which this
testimony is taken and, further, that I am not a relative or employee of
any

379295.1

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Oral Deposition - Josef Fuerlinger
December 3, 2004

counsel employed by the parties hereto or financially interested in the action.

SUBSCRIBED AND SWORN TO under my hand and seal

of office on this the

day of December, 2004.

Michelle Hartman-Solari, CSR, RPR
Texas CSR 7093
Expiration: 12/31/05
Nat Douget Court & Video Reporters
3207 Landfair Street
Lake Charles, Louisiana 70601
800-259-9900 Fax 800-259-5672

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Josef Fuerlinger - December 3, 2004
Examination by Mr. Cerski

14:37:11 1 A. Rotax does provide training to the
14:37:14 2 authorized distributor in Austria.
14:37:18 3 Q. Is it a single training course, or is it
14:37:22 4 multiple training that happens year after year?

14:37:28 5 A. Rotax offers this on a regular base -
14:37:37 6 Q- For -
14:37:38 7 A. -- to the authorized distributor.
14:37:41 8 Q. Okay. Do you publish a distributor list?
14:37:51 9 A. What do you mean with publish?
14:37:53 10 Q. Meaning how do you -- how do you let end

14:37:58 11 users know that there's a distributor available?
14:38:06 12 A. In any engine delivery which is sold
1-4:38:15 13 ex-works of Rotax, there is documentation included,
14:38:20 14 such as operator's manuals and others. In this is
14:38:26 15 defined also included the current status of the
14:38:29 16 authorized Rotax distributor.
14:38:34 17 Q. Okay. And if I was back home in the United
14:38:41 18 States in Pennsylvania and I wanted to buy a Rotax
14:38:44 19 engine, how would I know to go -- how would I know
14:38:51 20 where to go? Is there a list provided elsewhere, on
14:38:54 21 your website or anywhere else?
14:39:05 22 A. There is a Rotax aircraft engine website
14:39:11 23 which provides technical information and supporting
14:39:21 24 information to the product itself and a list of the
14:39:28 25 authorized Rotax distributors for aircraft engines.

379295.1

THERESA MARIE SIMEONE, et al.

v.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Plaintiffs,

CIVIL ACTION NO. 02CV4852

BOMBARDIER-ROTAX GmbH & Co. KG, et al., :

CERTIFICATION OF JOSEF FCRLINGER

Defendants.

says:

Josef Ffirdinger, being duly sworn according to law upon his oath deposes and

1. I am the former Vice President, Aircraft Engine for Bombardier Rotax GmbH Motorenfabrik, now known as BR-P-Rotax GmbH & Co. KG. Since September 1, 2002, I have held the position of Director of New Business Development. For BRP-Rotax GmbH & Co. KG. As such, I am familiar with BR-P-Rotax GmbH & Co. KG's ("Rotax") activities and general business practices.

2. I make this affidavit in further support of Defendant BRP-Rotax GmbH & Co. KG's Motion to Dismiss Plaintiffs' Complaint for Lack of Jurisdiction and Defendants' Bombardier Inc.s' and Bombardier Corporation's Motion for Summary Judgment.

3. I have personal knowledge of the facts set forth herein.

4. I read and write both French and English with facility.

5.5. Recently, I was asked for the first time to call from o5. Recently, I was asked for the first time to call from our files Pennsylvania. Pennsylvania. I did so and the results of my search are annexed here to Exhi Pennsylvania. I did so and the results of through 2763 " and marked "CONFIDENTIAL." All of the sales are to Harley Davidson for spare motorcycle parts.

6.6. The total of sales collected in Exhibit A is 18.136,366. The total of sales collected in Exhibit A is 18.136,36 Euros, which re Harley Davidson during the referenced time period.

7.7. Rotax conducts all business with Harley Davidson through Harley's corporate offic7. Rotax conducts all business Wisconsin. Wisconsin. With the exception Wisconsin. With the exception of the transactions recorded in Exhibit A, all deliveries Wisconsin Guns kirchen, Guns kirchen, Austria respectively FCA Guns kirchen, Austria. As Guns kirchen, Austria respectively FCA Guns kirchen, Austria passes in Austria.

8.8. It is Rotax's business practice to designat8. It is Rotax's business practice to designate a8. It is Rotax's business practice to recorded recorded in Exhibit A took recorded in Exhibit A took place on an emergent basis at therecorded in Exhibit A took place on an e properly properly service its customer, the United States properly service its customer, the United States military. properly service its customer urgent delivery which could only be arranged through UPS or DHL expedited, as reflected in the invoices.

9.9. The invoices also reflect that Harley's purchase9. The invoices also reflect that Harley's purchase order originated in9. The in Rotax Rotax had with Pennsylvania in connection with these transactions was as a po Rotax had with Pennsylvania in connection circumstances presented here. Our customer and the focal point of these transactions were both located in Wisconsin.

10.10. Attached as Exhibits B and C are 'Invoices addressed10. Attached as Exhibits B and C are 'Invoices s addressed to10. Attach Engineers Engineers (SAE Inc.) (Exhibit B) and Avantex Inc. (Exhibit C). Both invoices bear Pennsylvani Engineers (SAE Inc.) (Exhibit B) and place place of business of the Societ place of business of the Society of Automotive Engineers place of business of the Society of Automoc invoices invoices is US\$ 9.556,70 and the purchase were for written invoices is US\$ 9.556,70 and the purchase were for written materials r be obtained elsewhere.

11. Rotax has made no effort at any time to create a business presence in Pennsylvania.

12.12. I understand that the attorneys for the plaintiffs in this case have questioned the timing of our production of of Exhibit A. As previously nof Exhibit A. As previously noted, I of Exhibit A. As previously noted, I was not asked to produce a December December 4, 2004, when I was asked December 4, 2004, when I was asked to December 4, 2004, when I was asked to produce all

basisbasis for earlier statementsbasis for earlier statements I made regarding Rota x's practice of making all sales Ex works respectivelybasis
waswas mywas my knowledge and experience concerning that practice andwas my knowledge and experience concerning that practice a
StatesStates customers, States customers, as reflected inStates customers, as reflected in Exhibit D, which accurately discloses tha
Pennsylvania customers.

o

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13. I certify that the foregoing statements made by me aTe true to the best of
my knowledge. I am aware that if any of the fio g statements are willfully false, I
am subject to punishment.

DATED: 2-

B.R.Zl.: 365/2005/b

JosefFfirlinger

Ich best6tige die Echtheit der Unterschrift des Herm Ingenieur Jo sef **FOrlinger**,
geboren am 04.04.1956 (vierten April neunzehnhundertsechsfOnfzig),
WallackstraBe 24, 4623 Gunskirchen - -----
Wels, am 14.2.2005 (vierzehnten Februar zweitausendUnf)
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Bombardier-Rotax GmbH

A-4M QXZ;MM TMw: (0)7246160 1-0
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Harley-Davidson Motor Company

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HARLEY-DAVIDSON MOTOR COMPANY
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P. O. Box 493
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